

2006 WL 6347448 (Idaho Dist.) (Trial Motion, Memorandum and Affidavit)
Idaho District Court.
Fourth Judicial District
Ada County

Reed TAYLOR, Dallan Taylor, and R.John Taylor, Plaintiffs/Counter-Defendants,

v.

Thomas MAILE, IV and Colleen Maile, husband and wife, Thomas Maile Real
Estate Company, and Berkshire Investments, LLC, Defendants/Counter-Claimants.
THEODORE L. JOHNSON REVOCABLE TRUST, Plaintiff,

v.

Thomas MAILE, IV and Colleen, Maile, husband and wife, and Berkshire Investments, LLC, Defendants.

No. CV OC 0400473D.
August 25, 2006.

**Memorandum in Support of Plaintiffs' Motion for Judgment on the Pleadings
and/or for Summary Judgment On Defendants' Claim for Unjust Enrichment**

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COME NOW the Plaintiffs, by and through their counsel of record, and submit the following *Memorandum in Support of Plaintiffs for Judgment on the Pleadings And/Or For Summary Judgment on Defendants' Claim for Unjust Enrichment*.

I.

INTRODUCTION

As a matter of clarification and followup, during the August 21, 2006 motion hearing, this Court asked whether or not the Plaintiffs have ever raised the doctrine of unclean hands. Plaintiffs' counsel informed the Court that it was his understanding that this doctrine had been raised. In fact, unclean hands has been one of the Plaintiffs' affirmative defenses in regards to every equitable counterclaim the Defendants have tried to assert throughout this entire litigation. Most recently, the doctrine of unclean hands has been raised by the Plaintiffs in the *Amended Reply to Defendants' Amended Counterclaim and Demand for Jury Trial* filed in this action on September 29, 2005.

Additionally, in discussing the Defendants' unjust enrichment claim and the doctrine of unclean hands, the Court asked whether or not this was something that the Court could rule on as a matter of law. response, it is the Plaintiffs' position that these are issues that can be ruled on as a matter of law, and in fact, that these issues have already been briefed and argued before this Court but have not yet been addressed by the Court. As such, the Plaintiffs respectfully request that this Court grant judgment on the pleadings in this case in favor of the Plaintiffs on the Defendants' unjust enrichment claim or, in the alternative, grant summary judgment in favor of the Plaintiffs on the Defendants' unjust enrichment claim

II. ARGUMENT

I.R.C.P. 12(c) provides:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment....

I.R.C.P. 12(c) governs motions for judgment on the pleadings. *Trimble v. Engelking*, 130 Idaho 300, 302, 939 P.2d 1379, 1381 (1997). By its terms, Rule 12(c) treats such motions similarly to motions for summary judgment. *Id* at 302, 939 P.2d at 381. In motions for summary judgment where the record reveals no issues of disputed fact, the question is one of law. *Id* at 302, 939 P.2d at 1381.

I.R.C.P. Rule 56(b) provides in pertinent part as follows:

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in that party's favor as to all or any part thereof

A motion for summary judgment is to “be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c); *State v. Continental Casualty Co.*, 121 Idaho 938, 939, 829 P.2d 528 (1992). In determining whether there exists a genuine issue as to any material fact and whether the defendants are entitled to judgment as a matter of law, this Court is required to look to the totality of the record including motions, affidavits, depositions, pleadings and exhibits, and not to isolated portions of the record, *Id* (citing *Anderson v. City of Pocatello*, 112 Idaho 176, 731 P.2d 171 (1986)).

As stated above, it is the Plaintiffs' position that the Defendants are barred from pursuing an unjust enrichment claim because of the equitable doctrine of unclean hands. Additionally the Plaintiffs would like to emphasize that this is a position that has previously been before the Court and does not require any additional affidavits or briefing before the Court can rule on this matter. The issue of unclean hands been previously raised and supported in numerous motions and supporting briefs and affidavits. (For example please see *Plaintiff's Memorandum In Support Of Plaintiff's Amended Motion For Summary Judgment* (dated 09/29/05); *Reply Memorandum In Support Of Plaintiff's Amended Motion For Summary Judgment* (dated 11/01/05); *Response To Motion For Certification* (dated 07/07/06); and *Second Supplemental Affidavit of Dan Grober* (dated 11/03/05)).

The applicable law on this issue and the undisputed facts in the record of this case make the necessary analysis of this issue simple and straightforward, and the Plaintiffs will not go into great detail because great detail is not needed for the Court to decide this issue and because the Court has already heard everything it needs to decide this issue. In this case, the Defendants have asserted an equitable claim of unjust enrichment against the Plaintiffs and the Plaintiffs have asserted the affirmative defense of the doctrine of unclean hands, The essence of the quasi-contractual theory of unjust enrichment is that defendant has received a benefit which would be inequitable to retain at least without compensating a plaintiff to the extent that retention is unjust. *Beco Construction, Inc' v. Bannock paving Co., Inc.*, 118 Idaho 463, 466, (citations omitted) However, because of the equitable nature of an unjust enrichment claim, the Defendants must not have “unclean hands.” The unclean hands doctrine is stated as follows:

Principle that one who has unclean hands is not entitled to relief in equity. Doctrine means no more than that one who has defrauded his adversary in the subject matter of the action will not be heard to assert right in equity. The doctrine has no application unless party's wrongdoing has some proximate relation to the subject matter in controversy.

Black's Law Dictionary (5th edition 1979). It cannot be disputed that if the Defendants are found to have “unclean hands” then the Defendants are precluded from recovering on an unjust enrichment claims. Thus the issue before the Court is simply this:

Given the undisputed facts of this case, do the Defendants have unclean hands?

Based on the pleadings, records, and rulings already before this Court, the answer can only be affirmative.

It is undisputed that based on the pleadings of this case, that Defendant Maile breached his ethical and fiduciary duty to exercise the utmost good faith and fair dealing toward the Johnson Trust and its trustees, and failed to discharge those duties with complete fairness, honor, loyalty and fidelity, and the duty to use and exercise reasonable care, skill, discretion, and judgment in his involvement in the Linder Road property. *See Second Supplemental Affidavit of Dan Grober*, filed in this case on November 3, 2005.

It is undisputed that based on the pleadings and rulings in this case, that the Defendants had actual knowledge as a matter of law that the closing of the Linder Road Property required court authorization. Beth Rogers' dual role as trustee and beneficiary created a conflict of interest as a matter of law. *See Order Granting Plaintiffs' Motion For Summary Judgment on Beneficiaries' Claim*, pg. 5. That the scope of the trustee's power subject to judicial oversight under [Idaho Code Section 68-108\(b\)](#) applies not only to the power to enter into a contract for the sale of real property but also to the power to close a sale of real property. *Id.* That the existence of the conflict of interest necessitated prior court approval of the closing of the sale of the Linder Road property. *Id.*, pg. 6. And finally that the Defendants had actual knowledge that the Rogers were exceeding or improperly exercising their powers as a matter of law based on the finding that there is no genuine issue of fact that Defendant Thomas Maile prepared the trust agreement creating the conflict of interest. *Id.*, pg. 6.

It is undisputed that Defendant Thomas Maile acknowledged that the “majority” of the expenses to the Linder Road Property were incurred after he received the letter informing him that the purchase was being challenged. *See Ex.5.N to Submission of Transcripts.*

It is also the undisputed law of this case that given the controverted facts of this case, the Defendants cannot be considered bona fide purchasers for value. *See Taylor v. Maile*, 142 Idaho 253, 127 P.3d 156 (2005)

The uncontroverted facts already before this Court show that the Defendants lacked the “clean hands” necessary to pursue and unjust enrichment claim against the Plaintiffs. Furthermore such a holding would be consistent with other Idaho cases on point. In *Curtis v. Becker*, 130 Idaho 378, 941 P.2d 350 (Ct. App. 1997) citing *Chinchurreta v. Evergreen Management, Inc.*, 117 Idaho 591, 593, 790 P.2d 372, 374 (Ct.App.1989) (adopting [RESTATEMENT \(FIRST\) OF RESTITUTION § 2 \(1937\)](#)), the trial court had found that property owners were unjustly enriched by improvements made by a developer. The Court of Appeals reversed that ruling, finding that although it was undisputed that a benefit was conferred on the property owners, they could not be required to pay for improvements which were forced upon them by the developer, who was required to enter the court with “clean hands” before he could seek the equitable relief of unjust enrichment *Id*

III. CONCLUSION

Based on the foregoing, the Plaintiffs respectfully request that this Court grant their motion for judgment on the pleadings and/or summary judgment dismissing the Defendants' claim for unjust enrichment.

DATED this 25 th of August, 2006.